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## FUSION OF ANTI-CORRUPTION AGENCIES IN NIGERIA: A CRITICAL APPRAISAL

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*Nigeria has become...irretrievably corrupt and unwilling to succeed as a society or country<sup>1</sup>*

### 1. INTRODUCTION

On the list of the many sustainability challenges facing Nigeria as a country today, corruption comfortably enjoys a top position, for good reasons. Nigeria is said to lose up to 40% of its oil revenue to corruption.<sup>2</sup> Accusations of corruption are frequently made against government institutions and several individuals in positions of authority. While it may not be possible at present to protect any society completely from corruption, Nigeria has persistently suffered from the overwhelming effects of corruption.<sup>3</sup> Nigeria's tolerance for corruption has led it to having very high rates of poverty, conflict, insecurity and disease. Citizens complain of poor wages, poor security, weak institutions and even weaker checks and balances mechanisms in government institutions. It is not now very clear whether it is poverty and the weakness of government institutions that are the cause of corruption or *vice-versa*. Corruption has led to crippling mismanagement of substantial revenues by different administrations in Nigeria. In 2012 alone, over US\$ 100 billion (₦15.7 trillion) oil revenue accrued to Nigeria.<sup>4</sup> Nigerians are not accounted to by any single government department over the management of this vast revenue. A decade ago, it was estimated that approximately US\$20 billion is lost to corruption in Africa each year.<sup>5</sup>

Corruption is the most serious developmental challenge to Nigeria. Corruption is driven by Official tolerance for illicit enrichment, concentration of wealth and economic power in the hands of a few, blending of political and economic interests and total dependence on Crude Oil for income.<sup>6</sup> It undermines

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<sup>1</sup> Chinua Achebe, renowned Nigerian author in an interview. Available at: <http://www.modernghana.com/news/455855/1/chinua-achebe-as-a-moral-standard-a-tribute.html> date accessed 6/4/2013

<sup>2</sup> [http://www.boston.com/news/world/africa/articles/2004/12/17/corruption\\_costs\\_nigeria\\_40\\_percent\\_of\\_oil\\_wealth\\_official\\_says/](http://www.boston.com/news/world/africa/articles/2004/12/17/corruption_costs_nigeria_40_percent_of_oil_wealth_official_says/) date accessed 7/4/2013

<sup>3</sup> Nigeria is ranked 139<sup>th</sup> out of 176 countries in transparency international's 2012 corruption perceptions index. (<http://www.transparency.org/country#NGA>) date accessed 4/4/2013

<sup>4</sup> <http://www.africanliberty.org/content/nigeria-oby-ezekwesili-former-world-bank-vice-president-africa-insists-nigerian-government-wasted-oil-revenue> date accessed 3/4/2013

<sup>5</sup> G Acquah-Gaisie, 'Grand Corruption: A crime against humanity'(2003) - <http://www.personal.buseco.monash.edu.au/~geralds/temp/grand-corruption.pdf>

<sup>6</sup> Ibrahim Imam et al, 'Corruption in Nigeria: A call for an aggressive legal solution' [2010] 1 UNIZIK J.I.J.L. p.138

democracy and good governance in Nigeria. Corruption is also a threat to the security of human lives as thousands of lives are lost annually in Nigeria due to poor road and transport infrastructure, poor healthcare services and poor security and social services generally. Corruption is believed to be prevalent in Africa<sup>7</sup> and Nigeria in particular due to the absence of strong institutional and legal frameworks to combat it.

The very serious impact of corruption on socio-economic development of any country has continuously received the attention of the international community. Several international instruments have been drafted and adopted to combat corruption at both regional and international levels.<sup>8</sup> The United Nations (UN) has an instrument in this regard.<sup>9</sup> In Africa, the African Union also has adopted a treaty on combating corruption.<sup>10</sup> In Nigeria, there are in existence several institutions and a large body of legislation aimed at addressing the problem of corruption.<sup>11</sup> This Large body of legislation and several institutions notwithstanding, corruption remains a cankerworm of gargantuan proportions that has eaten very deep into the fabric of the nation known as Nigeria.

This paper examines corruption and its effects on Nigeria, the existing legal and institutional framework for combating corruption and the weaknesses of the existing framework, challenges to the fight against corruption, and considers the feasibility or otherwise of fusing anti-corruption agencies in Nigeria. It offers suggestions on how best to wage a successful war against corruption in Nigeria.

## 2. CONCEPTUALIZING CORRUPTION

It is not an easy task to define or attempt a precise and universally acceptable definition of corruption. Several unsuccessful attempts have been made to define corruption or its constituent acts with the resultant divergent views. Learned authors have posited that the term corruption includes 'all the forms of improper or selfish exercise of power and influence attached to a public as well as private office'.<sup>12</sup> In the Corrupt Practices and other Related Offences Act,<sup>13</sup> corruption is defined to include: bribery, fraud and other related offences<sup>14</sup>. Offences punishable include: willful giving and receipt of bribes and gratification to influence a public duty, fraudulent acquisition and receipt of properties, deliberate frustration of investigation by the anti-corruption commission (ICPC), making false returns, making of false or misleading statements to the anti-corruption commission, attempts, conspiracies and

<sup>7</sup> Ebenezer Durojaiye, 'Corruption as a threat to human security in Africa' in Ademola Abass (ed), *Protecting Human Security in Africa* (Oxford University Press, 2010), p.218

<sup>8</sup> See OECD convention on combating bribery of foreign public officials in international business transactions (agreed by members of the organisation for economic co-operation and development (OECD) in 1997.

(18 December 1997) 37 ILM 1.

<sup>9</sup> UN Convention against corruption (7 October 2003) UN Doc A/158/422 (Nigeria ratified this instrument in December 2004)

<sup>10</sup> African Union Convention on preventing and Combating Corruption (11 July 2003) 43 ILM. (which came into force on 6 August 2006). Nigeria ratified this convention in October 2006.

<sup>11</sup> Some of which are: The National Assembly *vide* its oversight functions, the Independent Corrupt Practices Commission (ICPC), the Economic and Financial Crimes Commission (EFCC), the Criminal Code Cap C LFN, 2004; the Money Laundering Prohibition Act, Cap Laws of the Federation of Nigeria (LFN), 2004; ICPC Act, Cap C31 LFN, 2004 etc.

<sup>12</sup> Y. Akinseye-George, *Legal System, Corruption and Governance in Nigeria*, (2000) New Century Law Publishers Ltd. Lagos, p.9

<sup>13</sup> Cap C31 LFN, 2004.

<sup>14</sup> FRN v. Inyang [2005] 3QCCR 120.

abetments of offences under the Act. 'Corruption' is defined in the Black's Law dictionary *inter alia* as:

...an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery or the act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.<sup>15</sup>

According to Black's law dictionary, 'corrupt' means: having an unlawful or depraved motive; especially influenced by bribery.<sup>16</sup> 'Corrupt' is also defined as: ...to bribe.<sup>17</sup>

From the foregoing, is easy to see that one string that runs through various definitions of corruption is the wrongful desire of pecuniary gain or acquisition of any other advantage. In *Cooper v. Slade*,<sup>18</sup> the House of Lords was of the view that 'corruptly' meant: "Purposely doing an act which the law forbids as tending to corrupt". In *Biobaku v. Police*<sup>19</sup>, Bairamian J illustrated and illuminated the use of the word 'corruptly' thus:

I do not think 'corruptly' means no more than 'improperly'. It would be equally true to say of any act which is an offence that it is 'improper' to do it- which of course is the reason why it is an offence under some section of the Code; but the word 'corruptly' does not always occur; for example, it is absent from S.99 which forbids an officer to take or accept any reward beyond his pay for the performance of his duty...

The notion behind S.98 is this in my view; an officer in the public service is expected to carry out his duties honestly and impartially, and this he cannot do if he is affected by considerations of benefit to himself or another person; and the mischief aimed at in S.98 is the receiving or the offering of some benefit as a reward or inducement to sway or deflect the officer from the honest and impartial discharge of his duties-in other words as a bribe or corruption or its price<sup>20</sup>

Corruption has also been defined as 'behaviour' which deviates from the formal duty of a public role because of private-regarding (family or close clique), pecuniary or status gain, or violates rules against the exercise of certain types of private-regarding influence.<sup>21</sup> It becomes clear, therefore, that to be guilty of corruption, a wrongful desire for pecuniary gain or some other advantage(s) has to be established.

Corruption has also been classified into many forms and a distinction is often made between 'petty corruption' and 'grand corruption'. While the first classification

<sup>15</sup> 9<sup>th</sup> ed. Bryan A. Garner (ed), Black's Law Dictionary 9<sup>th</sup> ed. Thomson Reuters, St. Paul, Minnesota, USA, 2009. p.397

<sup>16</sup> Ibid.

<sup>17</sup> Chambers 21<sup>st</sup> Century Dictionary, Mairi Robinson (ed), Chambers Harrap Publishers Ltd., 1999 p.306

<sup>18</sup> [1857] HL Cas 746

<sup>19</sup> [1951] 20 N.L.R. 30

<sup>20</sup> at p.31

<sup>21</sup> J Nye, 'Corruption and Political Development: A cost-Benefit analysis' (1967) 61 American Political Science Review. p.421.

refers to minor corrupt practices such as those involving small amounts of money, dispensation of minor favours by persons seeking preferential treatment or the employment of friends or relatives into minor positions, the second refers to large scale corrupt practices which exist or occur at the highest levels of government and which erode public confidence in good governance, the rule of law and negates economic progress or stability.<sup>22</sup>

In situations where the party offering the bribe or the inducer conspires with a government official to rob government of revenue, the classification 'collusive corruption' has been applied. But where the official only collects a bribe or demands a bribe in order to carry out statutory functions, it has been classified as 'non-collusive corruption'.<sup>23</sup> Even yet another distinction exists between Political and bureaucratic Corruption.<sup>24</sup> Political corruption would refer to vote-rigging, manipulation of the voters register, the falsification of election results and other corrupt acts aimed at capturing the apparatus of government or the control of political power while bureaucratic corruption involves efforts by civil servants to enrich themselves through illegal means.<sup>25</sup>

From the foregoing, it becomes clearer that a universally acceptable definition may not be available to cover the various forms of corruption though corruption may be defined as 'a departure from what is legally, ethically, and morally correct, lack of integrity or honesty, use of a position of trust for dishonest gain, moral perversion, impairment of virtue and moral principles, destruction of honesty or loyalty, undermining moral integrity, inducement of a public official to violate a duty'.<sup>26</sup>

### 3. COMMON MANIFESTATIONS OF CORRUPTION IN NIGERIA

#### 3.1. Bribery

Bribery is probably the most rampant and visible form of corruption in Nigeria. Bribery refers to the offering and receiving of money or other benefit for a reward, favour or to influence a decision and can be defined as 'the corrupt payment, receipt, or solicitation of a private favour for official action'.<sup>27</sup> Bribery can be initiated by the person who solicits for a bribe or the person who offers and then pays a bribe.<sup>28</sup>

A bribe may be any money, good, right in action, property, preferment, privilege, emolument, object of value, advantage, or merely a promise or undertaking to induce or influence the action, vote, or influence of a person in an official or

<sup>22</sup> See S Rose-Ackerman, 'democracy and Grand Corruption' in R Williams(ed), *Explaining Corruption* (Cheltenham: Elgar Reference Collection, 2000) p.326.

<sup>23</sup> J Smith et al, 'Illegal Logging, Collusive Corruption and Fragmented Government in Kalimantan, Indonesia' (2003) *International Foreign Review*. p.302.

<sup>24</sup> J Maku, 'Bureaucratic Corruption in Africa: the Futility of Cleanups' (1996) 16 *Cato Law Journal* p.102

<sup>25</sup> *ibid*

<sup>26</sup> Ibrahim Imam et al, 'Corruption in Nigeria: A call for an aggressive legal solution' [2010] 1 *UNIZIK J.I.J.L.* p.137

<sup>27</sup> *Black's Law Dictionary* 9<sup>th</sup> ed. Bryan A. Garner (ed), Thomson Reuters, St. Paul, Minnesota, USA, 2009. p.217

<sup>28</sup> UN Office on Drugs and Crime (UNODC), *The Global Programme against Corruption: UN Anti-corruption Toolkit* (The Ministries of Foreign affairs, Netherlands and Norway, 2004).

public capacity.<sup>29</sup> Bribery is also defined or explained in many international, regional and local instruments.<sup>30</sup> Bribery may also involve corporate bodies or other juristic personalities as was the case in the recent Halliburton bribery Scandal.<sup>31</sup>

### **3.2. Abuse of Discretion and Abuse of Office**

In recent times, the corrupt act of abuse of discretion has hit the headlines in Nigeria and elsewhere following the recent Alamiyeseigha Presidential pardon scandal.<sup>32</sup> Where an individual vested with powers or authority to do acts on behalf of the government decides to use those powers for personal or third party gain, abuse of discretion is complete. Abuse of discretion may also be in the form of exercise of discretion to purchase goods and services in a company in which he or she (person in authority) has personal interest. This may also amount to an abuse of office.<sup>33</sup> It will also amount to an abuse of discretion to propose a real estate development that may increase the value of an official's personal property. This form of abuse is usually common among government officials who often wield broad powers without proper checks or accountability mechanisms to curtail the abuse of such powers.<sup>34</sup>

### **3.3. Stealing, Fraud, and Misappropriation**

Stealing ordinarily consists of the fraudulent taking by a person or conversion of anything capable of being stolen to his own personal use or the use of a third party.<sup>35</sup> In the context of this work, it will imply the doing of the aforesaid by an individual who is not ordinarily entitled to the object(s) stolen but who by virtue of official position or employment has gained access to and dealt improperly with them. Stealing is a manifestation of corruption that is rampant in Nigeria; it is evidenced by the conviction of former top Nigerian government officials for the offence of stealing even in foreign countries.<sup>36</sup> Funds which could have been used to pay for sanitation, power supplies and healthcare for some of the poorest people in the world have been stolen and converted by top government officials and used to fund lavish lifestyles.<sup>37</sup> The damaging effects of the stealing of public funds and other property need not be emphasised because it is clearly demonstrated by the lack of critical infrastructure like roads and medical facilities, furthermore, it is clear that basic amenities like pipe borne water are still lacking in most parts of present day Nigeria.

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<sup>29</sup>See generally T. Markus Funk, "Don't Pay for the Misdeeds of Others: Intro to Avoiding Third-Party FCPA Liability," 6 BNA White Collar Crime Report 33 (January 14, 2011) (discussing bribery in the context of the Foreign Corrupt Practices Act)

<sup>30</sup> [www.oecd.org/dataoecd/4/18/38028044.pdf](http://www.oecd.org/dataoecd/4/18/38028044.pdf), S.21 Corrupt Practices and other related offences Act Cap C31, LFN 2004.

<sup>31</sup> It was established that the officials of Halliburton paid a total of approximately US\$180 million as bribes to Nigerian government officials in order to secure oil contracts. See <http://www.punchng.com/news/how-govt-agencies-killed-180m-halliburton-bribery-case/> last accessed 6/4/2013

<sup>32</sup> <http://www.vanguardngr.com/2013/03/alamiyeseigha-nba-slamsjonathan-over-pardon/> last accessed 6/4/2013

<sup>33</sup> *George v. FRN* [2011] 10 NWLR (Pt. 1254) 1

<sup>34</sup> See, e.g., footnote 18 above

<sup>35</sup> See S.383(1) Criminal Code Cap C38, LFN 2004. See also *Adenusi v. R* [1963] 1 All N.L.R. 316, chairman of a district council received money on behalf of the council and used it for his personal needs-guilty of stealing.

<sup>36</sup> See <http://www.bbc.co.uk/news/world-africa-17181056> last accessed 6/4/2013

<sup>37</sup> *Ibid.*

Fraud which simply means 'dishonesty' may consist of the use of false or misleading information or advise to deprive government or members of the public of property under the guise of improving efficiency, service delivery or through 'privatisation'. It is believed in Nigeria, that most privatised institutions of government are now worse than they were before privatisation.<sup>38</sup> A very sad story also emerges when a look is taken into the history of fraud in public procurement in Nigeria.<sup>39</sup> Some former public officials have also been convicted for fraud involving inflation of contracts in Nigeria.<sup>40</sup> This type of corruption affects the interests of the public because often more than not, the public is deprived of benefits that may have accrued if funds and discretion were judiciously utilized in the performance of public duties.

Misappropriation is the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose, particularly by a public official, a trustee of a trust, an executor or administrator of a dead person's estate, or by any person with a responsibility to care for and protect another's assets (a fiduciary duty).<sup>41</sup> The incidence of misappropriation is very high in Nigeria and numerous instances abound including the misappropriation of newly printed and unnumbered bank notes,<sup>42</sup> and pension funds.<sup>43</sup>

### 3.4. Extortion

In no other aspect of national life does extortion manifest more than it does in the policing aspect of public service. This aspect of corruption will, therefore, be discussed with exclusive reference to the Nigeria Police. Policing in Nigeria is characterized by pervasive corruption, such as diverting police resources for personal protection or enrichment in a variety of police-for-hire arrangements; harassment and intimidation of victims; and the destruction of evidence, including the bodies of victims of extrajudicial executions. Officers routinely practice extortion on members of the public at roadblocks and on public highways. Corruption and extortion are perhaps the defining characteristics associated with the Nigerian Police. For a majority of police officers, the police uniform is a tool for generating income. They make money by extorting law-abiding citizens, claiming that it is the price people must pay to keep the police from gratuitously interfering with their livelihoods. These instances merely illustrate a pattern of conduct that is pervasive and institutionalised within the Nigerian Police. The 2008 report of the second Presidential Committee on Police Reform acknowledges quite candidly that this is the image of the Nigerian police:

Indeed the Police today is publicly perceived as one of the most corrupt government institutions, with its personnel constantly accused of bribery and extortion in the course of performing their functions. These accusations are rampant amongst the populace, especially that relating to the extortion from members of the public. In addition, the

<sup>38</sup> <http://nationalmirroronline.net/new/privatisation-exercise-is-fraud-in-nigeria-reps/> accessed 6/4/2013

<sup>39</sup> <http://gopr.unodc.org/gopr/en/nigeria-profile.html> last accessed 6/4/2013,

<sup>40</sup> See *George v. FRN* supra. See also: <http://www.vanguardngr.com/2011/01/appeal-court-upholds-bode-george-others%E2%80%99-conviction/> last accessed 6/4/2013

<sup>41</sup> <http://legal-dictionary.thefreedictionary.com/misappropriation>

<sup>42</sup> [http://www.leadership.ng/nga/articles/41276/2012/11/29/minting\\_company\\_md\\_suspended\\_over\\_alleged\\_misappropriation.html](http://www.leadership.ng/nga/articles/41276/2012/11/29/minting_company_md_suspended_over_alleged_misappropriation.html)

<sup>43</sup> <http://www.vanguardngr.com/2013/01/police-pension-scam-efcc-re-arrests-yusufu-pension-boss/> date accessed 7/4/2013

Police have also been accused of erecting illegal road blocks in order to extort money from the citizenry. ... This has resulted in the loss of public confidence in the integrity of police personnel...Most police officers readily cite their poor pay as the principal reason for extortion. Some even claim that in the absence of basic provisions for policing, the police use proceeds from extortion to fulfil operational needs, such as stationery for recording statements from suspects, gasoline for patrol vehicles, batteries for mobile phone units, and similar day-to-day needs.<sup>44</sup>

There is no gainsaying that because of extortion, the Nigerian police Force has lost all its integrity and is, therefore, facing great obstacles in the confrontation of security challenges. Criminality has been on a steady increase as 'pay as you go' syndrome pervades the entire police force.

#### **4. IMPACT OF CORRUPTION IN NIGERIA**

There can be no doubt that Nigeria's political and economic challenges are fuelled by corruption. Some of the negative effects of corruption on Nigeria and its citizens will be examined in this section.

##### **4.1. Impact on the Security of Lives and Property**

One of the gravest consequences of corruption is the threat it poses to continued peace and security of lives and property. Since 1960 when Nigeria gained independence from British rule, hopes of poverty eradication and aspirations of becoming a developed country are yet to be realised. Nigeria is ranked very high on the list of the most corrupt countries in the world.<sup>45</sup> Electoral corruption often sparks violent protests leading to loss of lives. The lack of health determinants like potable water, clean sewage and sanitation systems, healthy environment, access to qualitative health care, intensive emergency care and food security are the obvious results of decades of squandering of oil wealth, corruption and incompetence or ineptitude of concerned government officials who are not accountable to citizens for failures to render efficient social services and delivery of the dividends of good governance.

In recent times, the maternal mortality ratio in Nigeria remains one of the highest in the world.<sup>46</sup> Reports have shown a connection between widespread corruption and the high maternal mortality ratio in Nigeria.<sup>47</sup>

The Niger Delta area has been engulfed in uprising which has led to loss of innumerable lives, incessant kidnappings and attacks on oil facilities which is the result of mismanagement and corruption among the ruling class. The near absence of social amenities and facilities such as good roads, and functional health care centres has led to further avoidable loss of life. It is indeed believed that this state of things is traceable to corruption among the ruling class. The ever soaring prevailing

<sup>44</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/nigeria/report-06-112.pdf?view=Binary>, date accessed 6/4/2013, <http://www.usip.org/files/resources/PB%20103.pdf> date accessed 6/4/2013

<sup>45</sup> <http://www.transparency.org/country#NGA> last accessed 4/4/2013.

<sup>46</sup> At 1,100 deaths per 100,000 live births, see *Maternal Mortality in 2005 Estimates* (Geneva: World Health Organization [WHO], 2007), p.33

<sup>47</sup> See, e.g., Center for Reproductive Rights (CRR), *Broken Promises: Human Rights, Accountability and Maternal Death in Nigeria* (New York: CRR, 2008).

crime rate in the country is, no doubt, the result of the desperation of unemployed youths which have resorted to armed robbery, and more recently, kidnapping.<sup>48</sup>

Kidnapping has now risen to prominence despite initially being confined only to the Niger Delta and is now a malaise in all parts of Nigeria, incidents of kidnapping often leading to death or financial ruin of the victims. Despite all the foregoing, the Government of Nigeria is yet to offer its citizens any succour from these damaging effects of corruption.

#### **4.2. Impact on political, social, and economic development**

Corruption is a threat to democracy and democratic institutions. Good governance is undermined by the subversion of formal duties and public roles due to private interests, wealth or status gains. The electoral process is often manipulated to the detriment of the voting public. These manipulated elections often produce leaders who are not only disconnected from the yearnings and aspirations of the people but are totally unaccountable to the public or the electorate. When the 'elected' officials do not account to the electorate, they account only to themselves!<sup>49</sup> Hence, good governance is relegated to the back burner while mediocrity and impunity have a field day. The most dangerous result of unabashed corruption is the truncation of democracy itself.<sup>50</sup>

Corruption sometimes rears its ugly head at the last bastion accountability in government, i.e. the judiciary. This leads to abuse of law and the total breakdown of law and order not to mention the caricature the judiciary is subjected to when this happens. Any compromise of the judicial arm of government spells doom for the society.<sup>51</sup>

For the economy, there is no gainsaying that corruption not only seriously stifles present economic growth but negates past economic gains. Loss of revenue, investments and trade opportunities are all results of corruption as businesses may move elsewhere while seeking a better business climate. Corruption may also lead to ineptitude and inefficiency in handling of economic decisions thereby leading to high costs of transacting business in the country. In most cases where corruption is rampant, awards of contracts are often inflated leading to unnecessary expenditure and increased risk in conducting business. Corruption allows inefficient producers to remain in business, encourages the pursuit of perverse economic policies, and provides opportunities to bureaucrats and politicians to enrich themselves through the extortion of bribes from those seeking government favours.<sup>52</sup> Corruption affects many areas of government business including but not limited to: public procurement, revenue collection, Foreign Direct Investment and application of foreign aid.

### **5. EXISTING STATUTORY AND INSTITUTIONAL FRAMEWORK FOR COMBATING CORRUPTION.**

At different times in Nigeria, government had taken bold steps through the passage of laws and establishment of institutions aimed at combating corruption. Presently

<sup>48</sup> Ebenezer Durojaiye, 'Corruption as a threat to human security in Africa' in Ademola Abass (ed), *op.cit* at 228

<sup>49</sup> *Ibid.* at p.224.

<sup>50</sup> Corruption was a constant reason given by military officers who interfered with and aborted previous democratic processes in Nigeria. See [http://www.ijbhtnet.com/journals/Vol\\_2\\_No\\_5\\_August\\_2012/21.pdf](http://www.ijbhtnet.com/journals/Vol_2_No_5_August_2012/21.pdf)

<sup>51</sup> Ebenezer Durojaiye, *op.cit* at 224

<sup>52</sup> *Ibid.* at p 225, see also footnote 18 above.



several laws exist in this respect. The relevant Acts or Statutes for the purpose of this work will be restricted to the following:

- a. The Constitution of the Federal Republic of Nigeria 1999<sup>53</sup>(as amended)
- b. Criminal Code Act<sup>54</sup>
- c. Penal Code<sup>55</sup>
- d. Money Laundering (Prohibition) Act, 2011
- e. Economic and Financial Crimes Commission Act<sup>56</sup>
- f. ICPC Act
- g. Corrupt Practices and other Related Offences Act,<sup>57</sup>
- h. Code of Conduct bureau and tribunal Act<sup>58</sup>
- i. Public Complaints Commission Act<sup>59</sup>
- j. Central Bank of Nigeria Act<sup>60</sup>

While the Institutions will be restricted to the following:

- i. The National Assembly
- ii. The Judiciary
- iii. Economic and Financial Crimes Commission
- iv. Independent Corrupt Practices Commission
- v. Public Complaints Commission
- vi. Code of Conduct Bureau and Code of Conduct Tribunal
- vii. Central Bank of Nigeria
- viii. Police and other Security Agencies
- ix. Federal Character Commission<sup>61</sup>

## **5.1. Brief Overview of the Anti-Corruption Institutions**

### **5.1.1. The National Assembly and States' Houses of Assembly**

The National Assembly and States' Houses of Assembly both have an important role to play in the anti-corruption crusade. Apart from enjoying the unfettered power to make laws aimed against the problem of corruption, the National Assembly and States' Houses of Assembly can exercise the power of investigation.<sup>62</sup> The oversight functions of the National Assembly and States' Houses of Assembly empower both the National and States' Legislatures to summon witnesses and apply punishment for perjury or contempt. These powers should be used to guard against corruption and be deployed to supervise government business. Hence, the National Assembly clearly possesses the Power to expose Corruption.<sup>63</sup>

### **5.1.2. The Judiciary**

The Judiciary, which comprises of all the courts in the country from the lower courts, which include: the Magistrate's, Area and Customary courts to the highest Court in the land, the Supreme Court. Section 6 of the Constitution establishes

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<sup>53</sup> Cap C23, LFN 2004

<sup>54</sup> Cap C38, LFN 2004

<sup>55</sup> Cap P3, LFN 2004

<sup>56</sup> Cap E1, LFN 2004

<sup>57</sup> Cap C31, LFN 2004

<sup>58</sup> Cap C15, LFN 2004

<sup>59</sup> Cap P37, LFN 2004

<sup>60</sup> Cap C4, LFN 2004

<sup>61</sup> Established by Federal Character Commission(Establishment) Act, Cap F7, LFN 2004

<sup>62</sup> See Ss. 88 and 128 of The Constitution of the Federal Republic of Nigeria 1999(as amended)

<sup>63</sup> Ibid. S.15

Superior Courts of Record and these include the High Courts and others of co-ordinate jurisdiction, the Court of Appeal, and the Supreme Court. Various States laws provide for courts below High Courts like the Magistrate, Area or Customary Courts. The role of interpreting the various statutes that govern the anti-corruption crusade is that of the Judiciary. All these courts are involved in the enforcement of anti-corruption laws as suspected offenders are tried before them. Prosecutions sometimes lead to conviction.

### **5.1.3. The Economic and Financial Crimes Commission (EFCC)**

The EFCC is specially and specifically dedicated to economic and financial crimes. It investigates and prosecutes corrupt offences as in Part IV of the EFCC Act.<sup>64</sup> These offences relate to financial malpractices, terrorism, retention of proceeds of a criminal conduct, economic and financial crimes, seizure and forfeiture of property and passport, and foreign assets.

### **5.1.4. The Public Complaints Commission (Ombudsman)**

The Public Complaints Commission is established under the Public Complaints Commission Act and operates to protect the public against corrupt oppressive exercise of power by public officers. Its investigations and recommendations can lead to prosecution or other forms of administrative or disciplinary measures against erring officials especially, corrupt public officers. Its performance has not been too impressive because of statutory limitations with regard to enforcement and the non co-operative stance adopted by public servants. It would also appear that this body is largely under-funded and, therefore, lacks operational facilities.<sup>65</sup>

### **5.1.5. The Code of Conduct Tribunal**

The Code of Conduct Tribunal is established under the Code of Conduct Act<sup>66</sup> and Paragraph 15 of the Part I of the Fifth Schedule to the Constitution.<sup>67</sup> The tribunal's primary responsibility is the trial of persons who violate the provisions of the Code. The main thrust of the Code is to prevent corruption in public life and offices.<sup>68</sup>

### **5.1.6. The Central Bank of Nigeria**

In the very law setting up the Bank<sup>69</sup>, provisions were entrenched to prevent corruption, dishonesty and misconduct. In order to ensure proper conduct on the part of the top management of the Bank, the Act provides, inter alia, that the Governor, any Deputy Governor or any Director shall cease to hold any office in the Bank if he is convicted of any offence involving dishonesty, is guilty of serious misconduct in relation to his duties under the Act or is disqualified or suspended from practicing his profession in Nigeria by order of a competent authority made in

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<sup>64</sup> Cap E1, LFN 2004 Ss.13-25

<sup>65</sup> E C Ngakwe, 'An Analysis of Jurisdictional Conflicts among anti-corruption Laws and Institutions in Nigeria' in D. U. Enweremadu and E. E. Okafor (eds), *Anti-Corruption Reforms in Nigeria since 1999: Issues, Challenges and the Way Forward*, IFRA Special Research Issue Vol. 3, Ibadan, (2009) p..8

<sup>66</sup> Cap C15, LFN 2004

<sup>67</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23, LFN 2004

<sup>68</sup> E C Ngakwe, *op.cit* at p.7

<sup>69</sup> The Central Bank of Nigeria Act, 2007

respect of him personally.<sup>70</sup> In the proceedings of the Board, as per the schedule to Section 54,<sup>71</sup> it is also provided that:

“any Director having any interest, directly or indirectly, in any dealing or business in which the Bank is concerned shall disclose such interest at the meeting of the Board at which the dealing or business is discussed and in no circumstance shall he vote in the matter...”

The bank is also empowered to co-operate and share information with other agencies in the performance of its duties.<sup>72</sup>

#### **5.1.7. Police and other Security Agencies**

The Police, Security Agencies and other law enforcement agencies of the state are established and governed by specific statutes. Police Act provides for Police with powers to investigate and arrest persons for corruption under all anti-corruption laws.<sup>73</sup> This power is however subject to the constitutional power of Attorneys-General as enshrined in the Nigerian Constitution.<sup>74</sup> The police can also prosecute under all laws and regulations vide the provisions of the Police Act.<sup>75</sup> The National Securities Agencies Act provides for three agencies namely: the Defence Intelligence Agency (DIA); the National Intelligence Agency (NIA); and the State Security Service (SSS). The SSS is the most visible among the trio. Although the statute tried to delineate their functions, they practically dovetail, interrelate or integrate sometimes.

#### **5.1.8. The Federal Character Commission (FCC)**

The Federal Character Commission is the only body empowered by law to ensure equity in the distribution of posts, socio-economic amenities, and infrastructural facilities amongst the federating units of Nigeria. The FCC policy on equity provides for what should be an ideal platform for socio-economic development built on oneness, transparency, trust and accountability. It is provided for in the Constitution of the Federal Republic of Nigeria,<sup>76</sup> its composition, functions and powers are as prescribed by the constitution and expanded by the FCC Act.<sup>77</sup> The FCC continues to face challenges in the area of funding, poor commitment to budget provisions and the result is low compliance with the National policy on equitable distribution.<sup>78</sup>

#### **5.1.9. The Independent Corrupt Practices Commission (ICPC)**

The ICPC is established under the Corrupt Practices and other Related Offences Act and operates to protect the public service against corrupt practices. Its investigations and recommendations can lead to prosecution or other forms of administrative or disciplinary measures against erring persons. Its performance has not been too impressive because of statutory limitations with regard to enforcement and the obvious non co-operative stance adopted by public servants. It would also

<sup>70</sup> Section 11 (1) (b),(c), and (d), CBN Act Cap, 2007

<sup>71</sup> Para.5 of the First Schedule to the CBN Act, 2007

<sup>72</sup> S. 33(6) (a) and (b) Of the CBN Act, 2007

<sup>73</sup> Ss. 4 and 23 Police Act Cap P19 , LFN 2004

<sup>74</sup> Ss. 174 and 211, The Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23, LFN 2004

<sup>75</sup> S.23 Police Act, Cap P19, LFN 2004

<sup>76</sup> S. 53 The Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23, LFN 2004

<sup>77</sup> Cap F7, LFN 2004.

<sup>78</sup> <http://www.federalcharacter.gov.ng/mtsschapterthree.php> date accessed 7/4/2013

appear that this body is largely under-funded and, therefore, lacks operational capacities. Its powers are diverse and are mostly aimed at reducing the incidence of corrupt practices.

## 6. CHALLENGES TO THE FIGHT AGAINST CORRUPTION

### 6.1. Immunity against prosecution by anti-corruption agencies.

Immunity from civil and criminal prosecution is granted to executive office holders during their tenure in office under Nigerian law. Top government officials enjoy blanket immunity from prosecution while in office.<sup>79</sup> From the Nigerian standpoint, it includes immunity from civil or criminal prosecution against the holder in his personal capacity while in office.<sup>80</sup>

Campaigners argue that the fight against corruption can only succeed if it goes after the "untouchables", public office holders who have direct responsibility for handling oil wealth but have broad constitutional immunity from prosecution. Given the numerous allegations of corrupt practices against some of these office holders there have been calls for the removal of the immunity conferred on them by the Constitution, so as to make way for their possible prosecution in court while in office. The EFCC really attacked this immunity for the first time by bringing fraud charges against former Plateau State Governor, Joshua Dariye.<sup>81</sup>

In a situation where immunity is constitutionally guaranteed, it becomes difficult for the anti-corruption agencies to act before it is too late. Examples abound of former state governors who looted public treasury while in power and then employed the huge resources available to them to frustrate the efforts of anti-graft agencies to investigate and prosecute them for corruption and related offences.<sup>82</sup> In fact, a former Nigerian State Governor who was unsuccessfully prosecuted for offences<sup>83</sup> bordering on corrupt enrichment and related offences in Nigeria subsequently pleaded guilty to the same offences in the United Kingdom (UK).<sup>84</sup> It is suggested that immunity should only extend to government officials to protect them against actions in civil courts only for official acts done in the discharge of statutory duties. And no immunity should be accorded to any person who is indicted for a criminal offence, especially of a type bordering on corruption.

### 6.2. Ineffective systems of ensuring public access to information

In Nigeria, ineffective systems for the public to request government information, and serious problems with enforcing conflicts of interest safeguards across much of

<sup>79</sup> <http://nials-nigeria.org/pub/NCLR10.pdf>, see also Adeleke, F.A.R, 'doctrine of Sovereign Immunity in Nigerian Law from Inception to Section 308 of 1999 Constitution'(2003) *Journal of International and Comparative Law*, Faculty of Law, University of Ilorin 7, no. 2 p.193

<sup>80</sup> *Tinubu v. IMB* [2001] 16 N.W.L.R. (pt. 740) 670.

<sup>81</sup> [http://www.boston.com/news/world/africa/articles/2004/12/17/corruption\\_costs\\_nigeria\\_40\\_percent\\_of\\_oil\\_wealth\\_official\\_says/](http://www.boston.com/news/world/africa/articles/2004/12/17/corruption_costs_nigeria_40_percent_of_oil_wealth_official_says/) date accessed 7/4/2013

<sup>82</sup> <http://www.economist.com/blogs/baobab/2012/04/corruption-nigeria> accessed 7/4/2013

<sup>83</sup> The EFCC, Nigeria's anti-corruption agency, tried to prosecute Mr. Ibori after he left office as governor of Delta State, Nigeria but his political connection and wealth allowed him to dodge any charges. He managed to transfer his court case from northern Nigeria to a court in Delta state, where the judge—his cousin—dismissed all 170 charges against him. A former head of the EFCC, Mallam Nuhu Ribadu, alleged Mr Ibori tried to bribe him with \$15m in cash to drop the investigations into his affairs. When he pursued the case further, Mr Ribadu was removed from office and later went into exile in Britain. On this see <http://www.economist.com/blogs/baobab/2012/04/corruption-nigeria> date accessed 7/4/2013

<sup>84</sup> <http://m.guardian.co.uk/global-development/2012/feb/27/james-ibori-pleads-guilty-fraud> date accessed 7/4/2013

the government remain. Legal provisions exist to theoretically guarantee a professional civil service, but they are often not enforced, contributing to the country's large implementation gap (the gap between anti-corruption laws on the books and their actual enforcement). The Economic and Financial Crimes Commission has come under serious political pressure in the past but remains a beacon of hope in the fight against corruption in the country. Despite Nigeria's reputation as one of the world's worst countries when it comes to curbing corruption, the landscape is not entirely bleak. The media is able to aggressively report on corruption, and there are increasingly effective procurement rules and regulations in place to avoid large-scale graft and waste in government spending.<sup>85</sup>

### ***6.3. Abuse of Office and Lack of Political Will to Tackle Corruption***

Nigeria has enough laws to tackle corruption effectively. However, implementing the laws is a problem. This much has been admitted by the Chairman of one of the anti-corruption bodies.<sup>86</sup> The Chairman of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), Ekpo Nta, said that Nigeria is not short of relevant laws to combat corruption but that the major challenge is the will to execute the laws.

The ICPC Chairman, speaking further identified the scourge as the fastest growing evil in the country, he stated: "We have more than enough laws that will stamp corruption out of our system but the problem is implementation. Implementing our laws is the problem."

Another problem militating against the war on corruption is abuse of office. As earlier stated, where an individual vested with powers or authority to do acts on behalf of the government decides to use those powers for personal or third party gain, abuse of discretion is complete; this may also amount to an abuse of office. Abuse of office militates against the war on corruption because it erodes the gains made by anti-corruption agencies and signals to all citizens and the international community that the anti-corruption agencies cannot bite hard enough. The nation's public servants and politicians are not worried about the ethical implications of their corrupt acts.<sup>87</sup> Recently, the President exercised his powers under the Constitution to grant state pardon to an ex-governor who had been convicted for corruption.<sup>88</sup>

This implies that the political establishment continues to reward corruption.<sup>89</sup> The Popular opinion is that his action amounted to abuse of office.<sup>90</sup> It has to be added that the president should have had regard to other relevant provisions on the subject.<sup>91</sup> Mr. President is in obvious violation and abuse of the spirit of the same 1999 Constitution.

<sup>85</sup> <http://www.globalintegrity.org/report/Nigeria/2010/> date accessed 7/4/2013

<sup>86</sup> see <http://premiumtimesng.com/news/119996-nigeria-lacks-will-to-fight-corruption-says-icpc-boss.html> date accessed 7/4/2013

<sup>87</sup> <http://www.osundefender.org/?p=96031> date accessed 7/4/2013

<sup>88</sup> Under S.175 (1) (a) of the 1999 Constitution Cap C23, LFN 2004 (as amended)

<sup>89</sup> <http://www.hrw.org/news/2011/08/25/nigeria-war-corruption-hangs-balance> date accessed 7/4/2013

<sup>90</sup> <http://www.osundefender.org/?p=96031> date accessed 7/4/2013

<sup>91</sup> S.15(5) of the 1999 Constitution Cap C23, LFN 2004 (as amended) which states *inter alia* that: "the State shall abolish all corrupt practices and abuse of power"

#### 6.4. Conflicts of interest among Anti-Corruption Laws and Institutions in Nigeria

There are common cases of conflicts of interest among the various agencies and institutions involved in anti-corruption crusade. Major conflicts of interest can be observed in the relations between or among various courts in the judiciary and law enforcement and security agencies; of particular importance are the conflicts that exist between:

##### **The Attorney General of the Federation, EFCC and ICPC:**

There are uncertainties and conflicts about the dividing line between the roles, functions and powers of EFCC, ICPC, etc. on investigation, handling and documentation of fraud or corruption. A former Attorney-General of the Federation and Minister of Justice, Chief Michael Kaase Aondoakaa, courted many controversies in this regard. From the earliest days of his assumption of office as the nation's Chief Law Officer, the former Attorney-General engaged in a battle for superiority with the Chairman of the EFCC, over the limit of the independence of the EFCC, as provided in its establishment Act.<sup>92</sup> When the former Attorney-General attempted to take over the prosecution of certain cases from the EFCC which hitherto had enjoyed minimal supervision from the Attorney-General and minister of Justice, a controversy arose as to who should be in control of the trial of the ex-governors. The Attorney-General in question had once served as a defence lawyer to one of the former governors being prosecuted by the EFCC.<sup>93</sup> His former client was also said to have facilitated his appointment to his job as AGF. The Attorney-General and Minister of Justice's role in the matter was, therefore, understandably tilted in favour of the former governors. Indeed, in the course of his duties as Minister, he left no one in doubt about his determination to protect not only his benefactor, but also all the other accused former governors. One way he tried to do that was to take over the trial of the ex-governors, under the pretext that this was premised on the "administration's respect for rule of law" and "the need for government to obey all judicial orders."<sup>94</sup>

More recently, the office of the Attorney-General interfered with the functions of the ICPC when it entered a *nolle prosequi* in respect of charges preferred against a minister.<sup>95</sup> Incidentally, the Chairman of ICPC was summarily removed as a result of this conflict.<sup>96</sup> The Attorney-General has also made regulations under the EFCC Act which implies that the EFCC may only prosecute any person without recourse to the Attorney-General of the Federation if the amount of money involved is less than ₦50 million.<sup>97</sup> Also, while the office of the AGF is keen to merge the anti-corruption agencies, the anti-corruption agencies insist that they have different functions under the enabling laws creating them.<sup>98</sup>

The Executive and the National Assembly; the executive arm and the legislative arm of government in Nigeria are often embroiled in controversy over

<sup>92</sup> <http://allafrica.com/stories/200712220006.html> date accessed 7/4/2013, under S.43 of the EFCC(Establishment) Act, the Attorney-General of the federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the Commission under the Act

<sup>93</sup> George Akume of Benue State.

<sup>94</sup> The Punch, September 18, 2007. p.14.

<sup>95</sup> <http://www.vanguardngr.com/2011/07/efcc-what-is-attorney-general-up-to/> date accessed 7/4/2013

<sup>96</sup> *ibid*

<sup>97</sup> *ibid*

<sup>98</sup> *ibid*

many issues<sup>99</sup> including the exercise of oversight functions and anti-corruption efforts of the latter. This can be seen in some conflicts in recent times.<sup>100</sup> These conflicts have led to decreased efficiency in the investigation and prosecution of corruption cases in Nigeria.<sup>101</sup>

### 6.5. A weak and overburdened Judiciary

Nigeria's weak and overburdened judiciary has also become an obstacle to effective prosecutions. Most of the corruption cases against high-level political figures have been stalled in the courts for years, with their trials not even begun.<sup>102</sup>

#### 6.5.1. Jurisdictional Conflicts between Federal and State Courts:

Federal offences are to be prosecuted in Federal High Courts only and same for state law offences. There are situations however where Federal and State laws exist and the crime violates simultaneously both laws. By the principle of covering the field, such state laws are supposed to go into abeyance for as long as the federal legislation applies. Besides these, Federal and State High Courts have a long history of jurisdictional conflicts bordering on such issues like presence or lack of criminal jurisdiction of Federal High Courts, implication of the unlimited jurisdiction of the State High Courts under the 1979 (now 1999) Constitution,<sup>103</sup> the implication of section 251 (1) of the 1999 Constitution on the jurisdiction of the State High Courts over matters involving Federal agencies. The result of these conflicts is a bumper harvest of case law.<sup>104</sup>

Another area of jurisdictional challenge of the courts as institutions for enforcing anti-corruption laws is that involving Magistrate's Courts especially in relation to the trial of indictable offences for which accused must elect summary trial before the court can be vested with jurisdiction. There are also issues arising from limitation of courts' jurisdiction with some courts being Courts of limited, unlimited, special and general jurisdiction. These conflicts are ably demonstrated in the early cases shaping the development of the Federal High Court. All these conflicts affect the effectiveness of the anti-corruption laws. Where these conflicts affect the competence of a court to try a corruption case, invariably the crime control efforts may not produce the desired results.<sup>105</sup> Conflicts (at least for interpretation) often exist between the numerous anti-corruption statutes. A learned author stated it succinctly thus:

"The complex wording of the provisions often makes it difficult to decide the appropriate section under which some cases of corruption can be brought. For example, in cases of official corruption, different sections govern the

<sup>99</sup> <http://www.punchng.com/news/president-speaker-clash-over-separation-of-powers-budget/> date accessed 7/4/2013

<sup>100</sup> <http://www.punchng.com/news/jonathan-may-back-oteh-against-nassembly/> date accessed 7/4/2013

<sup>101</sup> <http://library.fes.de/pdf-files/bueros/nigeria/07813.pdf> p.19 downloaded 7/4/2013

<sup>102</sup> <http://www.hrw.org/news/2011/08/25/nigeria-war-corruption-hangs-balance> date accessed 7/4/2013

<sup>103</sup> Constitution of the federal Republic of Nigeria 1999 (as amended)

<sup>104</sup> *Bronik Motors Ltd v. Wema Bank* (1983) 1 SCNLR 296;

*Mandara V. A-G (Federation)* (1984) 1 SCNLR 8;

*Savannah Bank of Nigeria Ltd v. Pan Atlantic Shipping and Transport Agencies Ltd.*(1987) 1 NWLR(Pt. 49)212

*Tukur v. Govt. of Gongola State* (1989) 4 NWLR (pt. 117) 517;

*Grace Jack v. University of Agriculture, Makurdi* (2005) 5 NWLR (pt.865) 208.

<sup>105</sup> E C Ngakwe, *op.cit* at p.50

situation depending on whether money was given (or received) to deflect a public officer, from his duty or as an inducement to perform his duty. Different sections also apply depending on whether or not the official concerned is a public officer *simpliciter*, or a public officer whose duties touch upon the administration of justice or a judicial officer'.<sup>106</sup>

While offences under the Criminal Code and Penal Code could be tried by the Magistrate's Courts even if by election of the accused in case of indictable offences,<sup>107</sup> offences under the Corrupt Practices and other related Offences (ICPC) Act and EFCC Acts could only be tried at High Courts.<sup>108</sup>

The more recent and specialized anti-corruption laws like the EFCC and ICPC Acts have however, introduced many measures to curb some observed lapses of the provisions of the Criminal Code in respect of anti-corruption this could be seen in the creation of a presumption of corrupt enrichment.<sup>109</sup>

## 7. DESIRABILITY OR OTHERWISE OF FUSING ANTI-CORRUPTION AGENCIES IN NIGERIA

The discussion on the desirability or otherwise of fusing anti-corruption agencies will focus only on the two agencies which are perceived to share the most similarities, the EFCC and the ICPC.

Since the EFCC was established in 2004, under the administration of former Nigerian President, Olusegun Obasanjo, the commission has gained wide public acknowledgement as an effective tool for combating corruption. The efficacy of the EFCC did not wane even when it was perceived as a tool used specifically for hounding the opposition.

Before the coming into being of the EFCC, there had been in existence an Independent Corrupt Practices (and Related Offences) Commission which was created to combat official corruption in Nigeria.

The perception of a part of the Nigerian public that the operations of the two agencies are indeed overlapping has led to calls for a fusion of both agencies.

In the first week of July, 2011, the Attorney-General and Minister of Justice of the Federation called for the merger of the two agencies.<sup>110</sup> His argument was that most of Nigeria's anti-corruption agencies lacked the capacity to conduct thorough investigations and that a reform was necessary to correct this perceived anomaly.

The call by the Attorney-General lent credence to the argument for the fusion of both agencies. An inquiry will be conducted as to the statutory functions of both agencies in order to determine if the call for fusion due to similarities / duplication of roles is justifiable.

The enabling law for the ICPC spells out its duties in section 10 and also specifically under other sections of the Act.<sup>111</sup> By the provisions of Section 10 of the

<sup>106</sup> Y. Akinseye-George, *'Legal System, Corruption and Governance in Nigeria'*, (2000) New Century Law Publishers Ltd. Lagos pp.47-48

<sup>107</sup> S.2 Criminal Procedure Act

<sup>108</sup> S.18 (1) EFCC Act Cap E1, LFN 2004.

<sup>109</sup> section 18 (3) of the EFCC Act, see also E C Ngakwe, 'An Analysis of Jurisdictional Conflicts among anti-corruption Laws and Institutions in Nigeria' in D. U. Enweremadu and E. E. Okafor (eds), *Anti-Corruption Reforms in Nigeria since 1999: Issues, Challenges and the Way Forward*, IFRA Special Research Issue Vol. 3, Ibadan, (2009) p.54

<sup>110</sup> <http://www.vanguardngr.com/2011/07/should-efcc-icpc-be-merged/>

<sup>111</sup> See Ss. 12-26, Corrupt Practices and other Related Offences Act., Cap C.38, LFN 2004



Corrupt Practices and other related Offences Act<sup>112</sup>, it shall be the duty of the commission to:

- a. Where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offense under this act or any other law prohibiting corruption, to receive and to investigate any report of the conspiracy to commit, attempt to commit or the commission of such offense and, in appropriate cases, to prosecute the offenders;
- b. examine the practices, systems and procedures of public bodies and where in the opinion of the commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;
- c. instruct advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimised by such officer, agency or parastatals;
- d. advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;
- f. to enlist and foster public support in combating corruption.

In addition to the above, other relevant sections on its duties are provided in sections 10-26 of the Act.

While the EFCC Act<sup>113</sup> provides for the duties of the EFCC to include:

- a) The enforcement and due administration of the provisions of the EFCC Act
- b) the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.;
- c) the co-ordination and enforcement of all economic and financial crimes laws and enforcement of functions conferred on any other person or authority;
- d) the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds;
- e) the adoption of measures to eradicate the commission of economic and financial crimes;
- f) The adoption of measures which include coordinated preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial crimes;

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<sup>112</sup> Cap C38, LFN 2004

<sup>113</sup> Cap E1, LFN 2004

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- g) The facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;
  - h) The examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;
  - i) The determination of the extent of financial loss and such other losses by government, private individuals or organisations;
  - j) collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning-
    - i. The identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes,
    - ii. the movement of proceeds or properties derived from the commission of financial and other related crimes,
    - iii. the exchange of personnel or other experts,
    - iv. the establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved,
    - v. maintaining data, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;
    - vi. undertaking research and similar works with a view to determining the manifestation, extent, magnitude, and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same,
    - vii. Clearing with connected with the extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes;
    - viii. Any other law or regulations relating to economic and financial crimes, including the criminal code or penal code.
  - k) Dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes
  - l) The collection of all reports relating to suspicious financial transactions, analyze and disseminate to all government agencies;
  - m) Taking charge of, supervising, controlling, co-ordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes;
  - n) The co-ordination of all existing economic and financial crimes investigating units in Nigeria;
  - o) Maintaining a liaison with the office of the Attorney-General of the Federation, the Nigerian Customs Service; the Immigration and Prison service board, the Central bank of Nigeria, The Nigerian Deposit Insurance Corporation, The National Drug Law Enforcement Agency, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradication of economic and financial crimes;

- p) Carrying out and sustaining rigorous public enlightenment campaign against economic and financial crimes within and outside Nigeria; and
- q) Carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under the Act.<sup>114</sup>

Furthermore, the EFCC is the co-ordinating agency for enforcement of the provisions of-

- a. The Money Laundering Act<sup>115</sup>
- b. The Advance Fee Fraud and other related offences Act<sup>116</sup>
- c. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, as amended<sup>117</sup>
- d. The Banks and Other Financial Institutions Act<sup>118</sup>
- e. Miscellaneous Offences Act,<sup>119</sup> and
- f. Any other law or Regulation relating to economic and financial crimes, including the Criminal Code<sup>120</sup> and Penal Code.<sup>121</sup>

A critical perusal of the provisions of the relevant sections of both Acts will reveal that duplication of roles do not exactly exist from the provisions of the enabling laws. Also the role of each agency is clearly defined and can only conflict if the enabling laws are not followed.

In fact, going by the provisions of the enabling law, it may be difficult for the ICPC to effectively prosecute any act of corruption because its powers of investigation and prosecution are not unlimited, and it appears to be mainly designed to review and advise public officers on the adoption of procedures to minimise corruption.<sup>122</sup> Fortunately, the EFCC does not enjoy such a mandate as the EFCC is empowered under the act to investigate, prevent, determine and identify financial crimes and in addition to those duties, coordinate and enforce “all”<sup>123</sup> economic and financial crimes laws while adopting preventive measures and also performing intricate scientific and technical functions.<sup>124</sup> The powers of the EFCC under the Act are clearly broader and provide more bite to the anti-corruption drive. Indeed, most of the financial crimes covered by the EFCC are not *strict senso* corrupt practices but are purely criminal offences emanating from financial transactions, it also includes terrorism. The EFCC is empowered with a novel mandate to deal also with the proceeds derived from terrorist activities, economic and financial crimes related offences or property of corresponding value to such proceeds.<sup>125</sup>

## 8. CONCLUSION

A review of the various anti-corruption laws existing in Nigeria reveals that the country has demonstrated concern for curbing corruption through diverse legislation. These laws also established many institutions and agencies for the

<sup>114</sup> *Ibid.* S.6

<sup>115</sup> Cap M 18, LFN 2004

<sup>116</sup> Cap A6, LFN 2004

<sup>117</sup> Cap F2, LFN 2004

<sup>118</sup> Cap B3, LFN 2004

<sup>119</sup> Cap M17, LFN 2004

<sup>120</sup> Cap C38, LFN 2004

<sup>121</sup> Cap P3, LFN 2004

<sup>122</sup> See S.10 Corrupt Practices and other Related Offences Act., Cap C.38, LFN 2004

<sup>123</sup> *Ibid.* at S.6(b)

<sup>124</sup> *Ibid.* at S.6 generally

<sup>125</sup> *Ibid.* at S.6(d)

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implementation and enforcement of anti-corruption measures. But there are varied conflicts surrounding these laws, agencies and the institutions for the enforcement of anti –corruption laws. And these conflicts must be resolved if the anti-corruption crusade is to continue beneficially.

As a matter of urgency, the issue of streamlining the operations of the agencies must be addressed. It is suggested that the number of the agencies be reduced to make supervision and control easier. If there is no control, the excesses or problems of the agencies like human rights abuses, disobedience to court orders, manipulations through function-switching by the executive, lack of coordination about anti-corruption activities among the agencies would rather exacerbate than abate. The government should initiate the long-term process of repairing the battered judiciary, reforming federal criminal procedure and evidence rules, and examine ways to establish special courts or assigning specific judges to hear only corruption cases.

With specific reference to the ICPC and the EFCC, it is recommended that no fusion is necessary; rather, the abilities of both agencies should be strengthened through improved funding and support from the government to enable optimal performance of both agencies. Both agencies should also make untiring efforts to enjoy a seamless and rancour-free relationship with the office of the Attorney-General of the federation in order to improve the efficiency of the anti-corruption drive of the Nigerian Government.